



January 25, 2006

SENATE BILL No. 146

DIGEST OF SB 146 (Updated January 23, 2006 11:24 am - DI 52)

Citations Affected: IC 13-25.

Synopsis: Property transfer disclosure form. Amends the form of the disclosure document for transfers under the responsible property transfer law to more strongly encourage inquiry into previous ownership and uses of the property and to include delivery, filing, and recording requirements.

Effective: July 1, 2006.

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January 9, 2006, read first time and referred to Committee on Energy and Environmental Affairs.
January 24, 2006, amended, reported favorably — Do Pass.

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SB 146—LS 6592/DI 52+



January 25, 2006

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

SENATE BILL No. 146

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 13-25-3-7 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 7. A disclosure
3 document delivered by a transferor of property under this chapter must
4 follow this form:

5 A WARNING TO THE PARTIES TO A TRANSFER OF
6 PROPERTY: ~~it is highly unlikely that~~ The single act of reading
7 this document ~~would be found to~~ **does not** constitute "all
8 appropriate ~~inquiry~~ **inquiries** into the previous ownership and
9 uses of the property" ~~so as facility to protect you against liability~~
10 ~~under the "innocent purchaser" provision of~~ **satisfy that**
11 **requirement under** the federal Comprehensive Environmental
12 Response, Compensation and Liability Act (42 U.S.C.
13 9601(35)(B)). You are strongly encouraged ~~not only~~ to read this
14 document carefully ~~but also and~~ to take all other actions
15 necessary to ~~the exercise of~~ **make a** due diligence ~~in your~~ inquiry
16 into the previous ownership and uses of the ~~property~~ **facility** **if**
17 **you intend to satisfy the criteria to avoid liability under the**

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**federal Comprehensive Environmental Response,
Compensation and Liability Act or IC 13-25-4.**
ENVIRONMENTAL DISCLOSURE DOCUMENT FOR
TRANSFER OF REAL PROPERTY

The following information is
provided under IC 13-25-3,
the Responsible Property Transfer Law.

For Use By County
Recorder's Office
County
Date
Doc. No.
Vol.
Page
Rec'd by:

I. PROPERTY IDENTIFICATION

A. Address of property:

Street

City or Town

Township

Tax Parcel Identification No. (Key Number): _____

B. Legal Description:

Section ____ Township ____ Range ____

Enter or attach complete legal description in this area:

LIABILITY DISCLOSURE

Transferors and transferees of real property are advised
that their ownership or other control of such property may
render them liable for environmental cleanup costs
whether or not they caused or contributed to the presence
of environmental problems in association with the
property.

C. Property Characteristics:

Lot Size _____ Acreage _____

Check all types of improvement and uses that pertain to
the property:

- ____ Apartment building (6 units or less)
____ Commercial apartment (over 6 units)
____ Store, office, commercial building
____ Industrial building
____ Farm, with buildings
____ Other (specify)

II. NATURE OF TRANSFER

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		Yes	No
1			
2	A. (1) Is this a transfer by deed or		
3	other instrument of conveyance of		
4	fee title to property?	___	___
5	(2) Is this a transfer by assignment		
6	of over 25% of beneficial interest of		
7	a land trust?	___	___
8	(3) A lease exceeding a term of 40		
9	years?	___	___
10	(4) A collateral assignment of		
11	beneficial interest?	___	___
12	(5) An installment contract for the		
13	sale of property?	___	___
14	(6) A mortgage or trust deed?	___	___
15	(7) A lease of any duration that		
16	includes an option to purchase?	___	___
17	B. (1) Identify Transferor:		
18	_____		
19	Name and Current Address of Transferor		
20	_____		
21	Trust No.		
22	Name and Address of Trustee if this is a transfer of		
23	beneficial interest of a land trust.		
24	_____		
25	(2) Identify person who has completed this form on		
26	behalf of the Transferor and who has		
27	knowledge of the information contained in this		
28	form:		
29	_____		
30	Name, Position (if any),	Telephone No.	
31	and Address		
32	C. Identify Transferee:		
33	_____		
34	Name and Current Address of Transferee		
35	III. ENVIRONMENTAL INFORMATION		
36	A. Regulatory Information During Current Ownership		
37	1. Has the transferor ever conducted operations on the		
38	property which involved the generation, manufacture,		
39	processing, transportation, treatment, storage, or handling		
40	of a "hazardous substance" (as defined by IC 13-11-2-98)?		
41	This question does not apply to consumer goods stored or		
42	handled by a retailer in the same form and approximate		

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amount, concentration, and manner as they are sold to consumers, unless the retailer has engaged in any commercial mixing (other than paint mixing or tinting of consumer sized containers), finishing, refinishing, servicing, or cleaning operations on the property.

Yes ____

No ____

2. Has the transferor ever conducted operations on the property which involved the processing, storage, or handling of petroleum, other than that which was associated directly with the transferor's vehicle usage?

Yes ____

No ____

3. Has the transferor ever conducted operations on the property which involved the generation, transportation, storage, treatment, or disposal of "hazardous waste" (as defined in IC 13-11-2-99(a))?

Yes ____

No ____

4. Are there any of the following specific units (operating or closed) at the property that are used or were used by the transferor to manage hazardous wastes, hazardous substances, or petroleum?

YES NO

Landfill ____

Surface Impoundment ____

Land Application ____

Waste Pile ____

Incinerator ____

Storage Tank (Above Ground) ____

Storage Tank (Underground) ____

Container Storage Area ____

Injection Wells ____

Wastewater Treatment Units ____

Septic Tanks ____

Transfer Stations ____

Waste Recycling Operations ____

Waste Treatment Detoxification ____

Other Land Disposal Area ____

If there are "YES" answers to any of the above items and the transfer of property that requires the filing of this document is other than a mortgage or trust deed or a collateral

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assignment of beneficial interest in a land trust, you must attach to the copies of this document that you file with the county recorder and the department of environmental management a site plan that identifies the location of each unit.

5. Has the transferor ever held any of the following in regard to this real property?

(A) Permits for discharges of wastewater to waters of Indiana. Yes ___
No ___

(B) Permits for emissions to the atmosphere. Yes ___
No ___

(C) Permits for any waste storage, waste treatment, or waste disposal operation. Yes ___
No ___

6. Has the transferor ever discharged any wastewater (other than sewage) to a publicly owned treatment works? Yes ___
No ___

7. Has the transferor been required to take any of the following actions relative to this property? Yes ___
No ___

(A) Filed an emergency and hazardous chemical inventory form pursuant to the federal Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11022). Yes ___
No ___

(B) Filed a toxic chemical release form pursuant to the federal Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023). Yes ___
No ___

8. Has the transferor or any facility on the property or the property been the subject of any of the following state or federal governmental actions?

(A) Written notification regarding known, suspected, or alleged contamination on or emanating from the property. Yes ___
No ___

(B) Filing an environmental enforcement case with a court or the solid

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- 1 waste management board for
 2 which a final order or consent Yes ___
 3 decree was entered. No ___
- 4 (C) If the answer to question (B)
 5 was Yes, then indicate whether
 6 or not the final order or decree
 7 is still in effect for this Yes ___
 8 property. No ___
- 9 9. Environmental Releases During Transferor's Ownership.
- 10 (A) Has any situation occurred at
 11 this site which resulted in a
 12 reportable "release" of any
 13 hazardous substances or
 14 petroleum as required under Yes ___
 15 state or federal laws? No ___
- 16 (B) Have any hazardous substances
 17 or petroleum which were released
 18 come into direct contact with Yes ___
 19 the ground at this site? No ___
- 20 If the answer to question (A) or (B) is
 21 Yes, have any of the following actions
 22 or events been associated with a release
 23 on the property?
- 24 ___ Use of a cleanup contractor to
 25 remove or treat materials including
 26 soils, pavement, or other surficial
 27 materials?
- 28 ___ Assignment of in-house
 29 maintenance staff to remove or treat
 30 materials including soils, pavement, or
 31 other surficial materials?
- 32 ___ Sampling and analysis of soils?
- 33 ___ Temporary or more long term
 34 monitoring of groundwater at or near
 35 the site?
- 36 ___ Impaired usage of an onsite or
 37 nearby water well because of offensive
 38 characteristics of the water?
- 39 ___ Coping with fumes from
 40 subsurface storm drains or inside
 41 basements?
- 42 ___ Signs of substances leaching out

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of the ground along the base of slopes or
at other low points on or immediately
adjacent to the site?

(C) Is there an environmental defect (as
defined in IC 13-11-2-70) on the
property that is not reported under
question (A) or (B)?

Yes ___

No ___

If the answer is Yes, describe the environmental defect:

10. Is the facility currently operating under a
variance granted by the commissioner of the
Indiana department of environmental
management?

Yes ___

No ___

11. Has the transferor ever conducted an activity
on the site without obtaining a permit from the
U.S. Environmental Protection Agency, the
commissioner of the department of
environmental management, or another
administrative agency or authority with
responsibility for the protection of
the environment, when such a permit was
required by law?

Yes ___

No ___

If the answer is Yes, describe the activity:

12. Is there any explanation needed for
clarification of any of the above answers or
responses?

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B. Site Information Under Other Ownership Or
Operation

1. Provide the following information about the
previous owner or about any entity or person to
whom the transferor leased the property or with
whom the transferor contracted for the
management of the property:

Name: _____

Type of business _____
or property usage _____

2. If the transferor has knowledge, indicate whether the
following existed under prior ownerships, leaseholds granted
by the transferor, or other contracts for management or use of
the property:

YES NO

Landfill	_____	_____
Surface Impoundment	_____	_____
Land Application	_____	_____
Waste Pile	_____	_____
Incinerator	_____	_____
Storage Tank (Above Ground)	_____	_____
Storage Tank (Underground)	_____	_____
Container Storage Area	_____	_____
Injection Wells	_____	_____
Wastewater Treatment Units	_____	_____
Septic Tanks	_____	_____
Transfer Stations	_____	_____
Waste Recycling Operations	_____	_____
Waste Treatment	_____	_____
Detoxification	_____	_____
Other Land Disposal Area	_____	_____

IV. CERTIFICATION

A. Based on my inquiry of those persons directly responsible
for gathering the information, I certify that the information
submitted is, to the best of my knowledge and belief, true and
accurate.

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TRANSFEROR (or on behalf of Transferor)

B. This form was delivered to me with all elements
completed on

_____ 19 20 _____

TRANSFeree (or on behalf of Transferee)

**V. FURTHER ACTION UPON COMPLETION OF THE
FORM**

**A. The transferor must comply with the delivery
requirements of IC 13-25-3-2 and the filing and recording
requirements of IC 13-25-3-8.**

**B. The transferee must comply with the recording
requirements of IC 13-25-3-8.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Energy and Environmental Affairs, to which was referred Senate Bill No. 146, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 1, delete "(a)".

Page 1, line 8, strike "inquiry" and insert "**inquiries**".

Page 1, line 9, strike "property".

Page 1, line 9, after "as" insert "**facility**".

Page 1, line 10, delete "for exemption".

Page 1, line 11, delete "from liability".

Page 1, line 16, strike "property" and insert "**facility**".

Page 1, line 17, delete "for an exemption from" and insert "**to avoid**".

Page 2, line 1, delete "42 U.S.C. 9601(35)(B) and 42 U.S.C. 9607(b)(3)" and insert "**the federal Comprehensive Environmental Response, Compensation and Liability Act**".

Page 9, delete lines 7 through 11, begin a new paragraph and insert:
"V. FURTHER ACTION UPON COMPLETION OF THE FORM

A. The transferor must comply with the delivery requirements of IC 13-25-3-2 and the filing and recording requirements of IC 13-25-3-8.

B. The transferee must comply with the recording requirements of IC 13-25-3-8."

and when so amended that said bill do pass.

(Reference is to SB 146 as introduced.)

GARD, Chairperson

Committee Vote: Yeas 8, Nays 0.

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